

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

TERESA ZAZENSKI,
Plaintiff,

v.

JILLIAN DANNER AND THE SOCIAL
VISTA, LLC.,
Defendants.

Case No. C-12-2344-RMW

FINAL JUDGMENT

[Re Docket No. 35]

On September 10, 2013, the court adopted the Report and Recommendation of the magistrate judge, entered default judgment, but deferred awarding damages until the court could hold an evidentiary hearing. Dkt. No. 35. On October 4, 2013, the court held an evidentiary hearing to determine damages.

As the Report and Recommendation noted, a plaintiff cannot recover damages under both contract and fraud. *See Roam v. Koop*, 41 Cal. App. 3d 1035, 1039, 116 Cal. Rptr. 539 (Ct. App. 1974). Because the fraud damages are not as well supported by the evidence and speculative, the court awards damages under a breach of contract theory. This excludes an award for emotional distress and punitive damages because they not available under contract law. *See Erlich v. Menezes*, 21 Cal. 4th 543, 558 (1999); *Quigley v. Pet, Inc.*, 162 Cal. App. 3d 877, 887 (Ct. App. 1984).


Based on the evidence presented, the court is satisfied that plaintiff Teresa Zazenski, has proven the following damages:

- \$63,141.33 for total lost wages from March 31, 2011, through April 16, 2012;
- \$11,918.04 for unused vacation days, promised paid severance days, worked holidays, and unused sick leave;
- \$9,296.43 for unreimbursed business expenses;
- \$1,000 for the promised and unpaid technology allowance;
- \$8,550 for lost unemployment benefits.¹

The court declines to award further damages or attorney's fees. The court accepts that Mrs. Zazenski could have provided additional testimony about the interest on her house, the value of Social Vista, and the emotional distress she suffered from not being paid. The court also accepts that Mr. Zazenski would have similarly testified as counsel represented. Nevertheless, Mrs. Zazenski's other theories of damages are simply too speculative and not sufficiently supported.

Therefore, the court orders that Teresa Zazenski is entitled to recover a total of \$93,905.80 from Jillian Danner and the Social Vista, LLC.

Dated: October 4, 2013


Ronald M. Whyte
United States District Judge

¹ This number is lower than plaintiff requested because California only provides a maximum of \$450 per week for unemployment benefits and requires a one week waiting period before an individual is eligible. The court calculates that there were 20 full weeks between the date Mrs. Zazenski was let go and the date she got a new job. Thus her lost unemployment was 19 weeks * \$450.